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FM SECSTATE WASHDC

TO AMEMBASSY TOKYO

S E C R E T STATE 002540

PLEASE PASS TO BERNARD H. OXMAN, US OBSERVER TO AALCC

FOLLOWING SENT ACTION SECSTATE, JCS, INFO CINCPAC, CINCUNC,
CNFK, DECEMBER 28, FROM SEOUL RPTD TO YOU:

QUOTE S E C R E T SEOUL 8696

JOINT EMBASSY/UNC MESSAGE

E.O. 11652: GDS

TAGS: PBOR, KS, KN

SUBJECT: NORTHERN LIMIT LINE: DEFINING CONTIGUOUS WATERS

REF: (A) STATE 249866; (B) CINCUNC 241109Z DEC 73

SUMMARY: EMBASSY/UNC BELIEVE THAT ATTEMPT AT THIS TIME TO DEFINE
"CONTIGUOUS WATERS" AS EXTENDING TWELVE MILES, EVEN FOR PURPOSES
OF THE ARMISTICE AGREEMENT ONLY, WOULD TAKE U.S. BEYOND ROKS
OWN CURRENT POSITION AND WOULD TEND TO ENMESH US IN VERY TERRIT-
ORIAL SEA QUESTIONS WE WISH TO AVOID. ON THE OTHER HAND, WE
BELIEVE THIS IS THEORETICALLY FEASIBLE POSITION ORKS MAY THEMSEL-
VES WISH TO ADOPT IN DUE COURSE. END SUMMARY.

1. EMBASSY/UNC AGREE WITH REF A THAT WE SHOULD LIMIT OUR POSITION
ON NLL TO INTERPRETATIONS OF AND ASSERTING RIGHTS UNDER ARMISTICE
AGREEMENT. WE QUESTION HOWEVER BASIS FOR DEPARTMENT'S CLAIM IN
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PARA 3 REF A TO TWELVE MILE LIMIT FOR PURPOSES OF AGREEMENT. OUR

RATIONALE FOR LIMITING AREA OF OUR CLAIM TO THREE RATHER THAN TWELVE MILES AS FOLLOWS.

2. ROKG OFFICIAL POSITION REITERATED TO US AS RECENTLY AS LAST WEEK, HAS BEEN TO REFUSE TO DEFINE EXTENT OF TERRITORIAL WATERS BEYOND THREE MILES WHILE ENFORCING THEM UP TO THREE MILE LIMIT. ROK/UNC POSITION AS CONTAINED IN UNC RULES OF ENGAGEMENT HAS BEEN THAT TERRITORIAL SEA RIGHTS WILL BE ENFORCED WITHIN THREE MILES OF ROK LAND AREAS. THE OPTION OF NECESSARY ACTION IN "CONTIGUOUS WATERS" IN THE EXERCISE OF THE RIGHT OF SELF DEFENSE IS RETAINED. ROKS HAVE CONSISTENTLY AVOIDED ACKNOWLEDGEMENT OF NORTH'S TWELVE-MILE CLAIM AND THE LIMITS OF CONTIGUOUS WATERS HAVE NOT BEEN DEFINED IN THE RULES; RATHER THEY HAVE BEEN DE FACTO ESTABLISHED BY THE PATROL AREAS, WHICH EXTEND OUT TO THE ADIZ BOUNDARIES AND UP TO THE NLL ON EACH COAST.

3. TO GO BEYOND THIS POSITION AT THIS TIME WOULD INVOLVE US IN A MAJOR CHANGE OF RULES IN MIDSTREAM WHICH WE BELIEVE UNNECESSARY AND UNWISE. NORTH KOREAN ENTRY INTO AREAS BETWEEN THREE AND TWELVE MILES WEST AND SOUTHWEST OF Y-P DO AND THREE AND TWELVE MILES WEST OF P-Y DO WOULD ABRUPTLY BECOME "VIOLATIONS" UNDER PROPOSED REDEFINITION OF CONTIGUOUS WATERS, WHEREAS HITHERTO WE HAVE NOT PROTESTED NUMEROUS NK ENTRIES INTO THESE AREAS. AT SAME TIME ROKS WOULD HAVE TO CEASE CURRENT OPERATIONS WITHIN TWELVE MILES OF NORTHERN COAST; AS PREVIOUSLY REPORTED SOME PATROLS AND FISHING OPERATIONS EXTEND TO WITHIN TEN MILES OF LAND IN AREA BETWEEN ISLAND GROUPS.

4. ASIDE FROM THESE IMMEDIATE PRACTICAL PROBLEMS, WE BELIEVE ANY ACTION BY US TO SUPPORT TWELVE MILE "CONTIGUOUS WATERS" LIMIT, EVEN IF ONLY FOR PURPOSES DEFINING ARMISTICE AGREEMENT, WOULD APPEAR TO BE PRECEDENT SETTING IN LEGAL TERMS WHATEVER OUR PROTESTATIONS. IT WOULD INCITE STRONG NK REACTION, AND WOULD INEVITABLY ENMESH US IN TERRITORIAL WATERS DISPUTE WHICH WE WISH TO AVOID AND WHICH MORE PROPERLY SHOULD BE TAKEN UP BILATERALLY BY ROKS, OR LEFT TO LOS CONFERENCE.

5. WE DO NOT BELIEVE IT NECESSARY TO GO BEYOND PRESENT POSITION CONTAINED IN RULES OF ENGAGEMENT IN ORDER TO PRESERVE TWELVE MILE OPTION SHOULD ROKS CHOSE TO PURSUE IT. WHILE IN DE FACTO FASHION

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WE HAVE BEEN CLAIMING ARMISTICE AGREEMENT VIOLATIONS WITHIN THREE MILE CONTIGUOUS WATERS, WE HAVE NOT PUBLICLY AND EXPLICITLY SET THAT AS "DEFINITION" OF CONTIGUOUS WATERS UNDER ARMISTICE AGREEMENT. BY AVOIDING ANY PUBLIC MENTION OF MILEAGE LIMITS TO CONTIGUOUS WATERS ROKS PRESERVE THEIR OPTIONS. IN ANY EVENTUAL BILATERAL NEGOTIATIONS ROK CASE FOR TWELVE MILES WILL BE PARTICULARLY STRONG AS LONG AS NORTH MAKES SIMILAR CLAIM.

6. WHILE WE DO NOT BELIEVE THAT WE SHOULD BE TAKING PROPOSED APPROACH AT THIS TIME, TWELVE MILE DEFINITION OF CONTIGUOUS WATERS DOES OFFER THEORETICALLY RATIONAL, LONG TERM SOLUTION THAT ROKS MAY EVENTUALLY WISH TO TAKE UP IN BILATERAL CONTEXT WITH NORTH, IN EVENT NORTH WISHES TO NEGOTIATE SERIOUSLY. HOWEVER, WE BELIEVE IT WOULD BE PREMATURE TO APPROACH ROKS WITH SUCH PROPOSITION AT THIS TIME BECAUSE OF THEIR CURRENT RELUCTANCE TO GIVE UP THEIR POSITION ON NLL AND ALMOST CERTAIN NORTH KOREAN REJECTION OF SUCH A PROPOSAL.

7. AT SAME TIME WE BELIEVE IT NECESSARY TO CONTINUE LOOKING FOR OTHER POSSIBLE MEANS OF REDUCING TENSIONS AND AVOIDING CONFRONTATION IN NLL AREA. AS INDICATED REF B WE ARE NOT MAKING FORWARD PROGRESS AT THIS POINT TOWARD DEFUSING SITUATION DISCUSSIONS. WE WILL THEREFORE BE GIVING CAREFUL CONSIDERATION TO ALTERNATIVES. AS A NEXT STEP WE PLAN TO DISCUSS INFORMALLY WITH ROKS VARIOUS ASPECTS OF PROBLEM, INCLUDING QUESTION OF PATROLS AND FISHING OPERATIONS INSIDE TWELVE MILE LIMIT BETWEEN THE TWO ISLAND GROUPS. UNDERHILL UNQUOTE. KISSINGER

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